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CHAPTER 13 STANDING TRUSTEE
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Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

CHAPTER 13

PAUL ROGER MULDER
VICKI LORRAINE MULDER

CASE NO. 12-40369 WJL 13

**TRUSTEE'S OPPOSITION TO
APPLICATION FOR COMPENSATION**

Debtors,

DATE: August 13, 2015
TIME: 1:30 p.m.
LOCATION: Courtroom #220

Martha G. Bronitsky, Chapter 13 Standing Trustee
("Trustee"), opposes Attorney's Supplemental Application for
Compensation ("Application," doc. #57) based on the reasons
cited below.

The Trustee also requests that the Court take judicial
notice of its own records in the case herein in support of the
facts set forth below. Fed.R.Evid. 201.

FACTS

1. On January 13, 2012, the Debtors filed for Chapter 13 bankruptcy relief.
2. The Debtors are represented by Henry G. Rendler ("Applicant").
3. The Disclosure of Compensation of Attorney for Debtor ("Form 2016B") lists no retainer with a balance of \$3,600 to be paid through the plan. (Doc. #5).
4. The Rights and Responsibilities of Chapter 13 Debtors and their Attorneys ("R&R") lists initial fees of \$3,600. (Doc. #7).
5. The full \$3,600 has been paid to the attorney through the plan.
6. The confirmed Chapter 13 Plan ("plan") requires payments of \$700 for 3 months, \$1,900 for 1 month, and \$1,000 for 56 months and estimates a 100% distribution to general unsecured creditors at .12 percent annual interest. (Doc. #43).
7. The Debtor was required to pay 100% to general unsecured based on non-exempt equity of approximately \$145,000. (See schedule A, doc. #17, page 3; schedule C, doc. #17).
8. The Internal Revenue Service ("IRS") filed an unsecured priority claim for \$200. (Claim #1).
9. Nationstar Mortgage ("Nationstar") filed a secured claim for \$43,945.47 in arrears. (Claim #3-2).
10. The Debtors are current through July (month 42).
11. There are 18 months remaining.

- 1 12. The Application seeks additional fees and costs of
2 \$20,302.86. (Doc. #57).
- 3 13. If the fees and costs are awarded the plan will run 75
4 months and there will be no distributions to general
5 unsecured creditors.
- 6 14. The Application acknowledges pre-petition equity of at
7 least \$300,000. (Doc. #57, page 2, line 13).
- 8 15. In summary, the basis for the fees include:
- 9 A. An emergency bankruptcy filing to prevent a sale of
10 Debtor's real property;
- 11 B. Preparation of the Chapter 13 petition, schedules,
12 statement of financial affairs, and the plan;
- 13 C. Responding to objections filed by the Bank of New
14 York and Alameda County Tax Collector;
- 15 D. Objecting to Bank of New York's proof of claim;
- 16 E. Responding to Trustee's Motion to Dismiss;
- 17 F. Post-confirmation work related to "lender-related
18 issues" in an attempt to refinance real property
19 that ultimately required referral to outside counsel
20 (Ben Dupre).
- 21 16. Debtor's counsel left a voicemail on or about December
22 18, 2013, regarding a possible refinance but there has
23 been no other communication in the intervening 18 months.
- 24 17. It is unclear whether the Debtors have entered into a fee
25 agreement with Mr. Dupre, whether Mr. Dupre has accepted
26 fees from the Debtors, or whether Mr. Dupre has done work
27 for the Debtors that has benefited the Debtors or the
28 estate.

1 18. The Debtor has approximately \$2,825 in general unsecured
2 debt.

3 **ARGUMENT**

4 **A. APPLICATION INCLUDES FEES FOR SERVICES THAT ARE COVERED IN**
5 **THE RIGHTS AND RESPONSIBILITIES**

6 The Attorney was paid \$3,600 to assist the Debtor in filing
7 a Chapter 13 petition, preparing schedules and a statement of
8 financial affairs, and a Chapter 13 Plan. The primary goal was
9 to stop a foreclosure by Bank of New York due to approximately
10 \$45,000 in pre-petition arrears.

11 The R&R lists the standard duties of counsel in a Chapter
12 13 filing in exchange for the flat-fee listed in the Oakland
13 Division Guidelines. The services are separated into pre and
14 post-filing duties. After the case is filed, the Attorney
15 agrees to at least nine enumerated duties:

- 16 1. Appear at the 341 Meeting of Creditors;
- 17 2. Respond to objections and amended the plan if necessary;
- 18 3. Prepare, file, and serve motions to modify plan;
- 19 4. Amend statements and schedules;
- 20 5. Prepare, file, and serve motions to buy, sell, or
21 refinance property;
- 22 6. Object to invalid claims;
- 23 7. Represent debtors in motions for relief from stay;
- 24 8. Prepare, file, and serve motions to avoid liens; and
- 25 9. Provide such other legal services "as are necessary for
26 the administration the present case"

27 The Attorney seeks fees and costs of \$20,302.86 presumably
28 pursuant to 11 U.S.C. §330. Section 330(a)(4)(B) allows

1 "reasonable compensation" based on "consideration of the benefit
2 and necessity" of the services.

3 That an Attorney documents his work is not *per se* grounds
4 to approve an application for additional fees. The application
5 should be denied because it is for services that the Debtors
6 could reasonably expect would be included in the R&R. The
7 primary basis for the fees are:

- 8 A. An emergency bankruptcy filing to prevent a sale of
9 Debtor's real property;
- 10 B. Preparation of the Chapter 13 petition, schedules,
11 statement of financial affairs, and the plan;
- 12 C. Responding to objections filed by the Bank of New
13 York and Alameda County Tax Collector;
- 14 D. Objecting to Bank of New York's proof of claim;
- 15 E. Responding to Trustee's Motion to Dismiss;
- 16 F. Post-confirmation work related to "lender-related
17 issues" in an attempt to refinance real property
18 that ultimately required referral to outside counsel
19 (Ben Dupre).

20 The Trustee does not dispute that the Attorney provided
21 services to the Debtors that helped the Debtors obtain
22 confirmation of their Chapter 13 plan. Indeed, the Trustee
23 would not oppose additional fees of \$1,200 which would increase
24 the total compensation to \$4,800, the amount permitted under the
25 Oakland Division Guidelines.

26 The services, however, were primarily covered under in the
27 R&R under items 2 (respond to creditor objections), 5 (aid in
28 selling or refinancing of real property), 6 (object to invalid

1 claims), and 9 (other necessary legal services, i.e., appear at
2 confirmation hearings, respond to motions to dismiss, etc.).
3 These services are not extraordinary or unusual. That they may
4 be time consuming - depending on the facts of each individual
5 case -- is not grounds alone to award additional compensation.
6 That this was an "emergency filing" with significant arrears is
7 not grounds to approve additional fees either.

8 The R&R and initial fees represent a fair compromise
9 between the Debtors and the Attorney. Each party knows what is
10 covered under the representation. Attorneys understand that
11 some cases will require more work than others, but unless there
12 are unexpected and unusual circumstances, both parties should be
13 bound by the agreement.

14 **B. PLAN MUST PAY 100 PERCENT TO UNSECURED CREDITORS PURSUANT**
15 **TO 11 U.S.C. § 1325(a) (4)**

16 The confirmed plan requires 100 percent to general
17 unsecured creditors with .12 percent interest. This was
18 required to meet the best interests of the creditors test
19 pursuant to 11 U.S.C. § 1325(a)(4). The Application concedes
20 that the Debtor had \$300,000 in pre-petition equity.

21 If the Application is approved, general unsecured creditors
22 will receive nothing. As a result, the application cannot be
23 approved.

24 **C. PLAN WILL BE UNFEASIBLE**

25 If the Application is approved, the plan will no longer be
26 feasible. There are 18 months remaining. If the fees and costs
27 are approved, the plan will run 75 months. As a result, the
28 Application cannot be approved.

1 **D. APPLICATION INCLUDES FEES FOR SERVICES THAT HAVE NOT**
2 **BENEFITED THE DEBTORS OR THE ESTATE**

3 The Application includes fees for post-confirmation "lender
4 related issues" with respect to correcting information on the
5 Debtor's credit report and refinancing the Debtor's real
6 property. The Applicant contacted the Trustee's office in
7 December 2013 regarding approval for a refinance but there has
8 been no communication since. The Applicant ultimately referred
9 the Debtors to outside counsel, Ben Dupre.

10 There is no evidence that the Debtors have been able to
11 refinance their property or that credit reporting issues have
12 been corrected. Likewise, it is unclear if the Debtors have
13 retained Ben Dupre, if they have paid Dupre any fees in
14 connection with his services, and what, if any, services Mr.
15 Dupre has performed.

16 Since there is no evidence that the Applicant's services
17 benefited the Debtors or the estate, the additional fees in
18 connection with the post-confirmation services should be denied.
19 Moreover, the Applicant, the Debtors, and or Mr. Dupre should be
20 required to file a declaration regarding Mr. Dupre's involvement
21 in the case.

22 **CONCLUSION**

23 WHEREFORE, the Trustee respectfully objects to Attorney's
24 Supplemental Application for Compensation.

25 RESPECTFULLY SUBMITTED

26 July 28, 2015
27 DATE

/s/Martha G. Bronitsky 5909
 Martha G. Bronitsky, Esq.
 Chapter 13 Standing Trustee